

Conclusions of the Intersessional Working Group on Registration Criteria (IWGRC)

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UNIDROIT MAC Protocol

Second Session of the Committee of Governmental Experts

Rome, October 02 – 07, 2017

The Intersessional Working Group on Registration Criteria (IWGRC)

Intersessional Working Group on Registration Criteria:

- established by decision taken at the first session of the CGE (March 2017)
- ten delegations took part, practitioners and other national experts from different legal backgrounds
- preparation of conclusions paper: UNIDROIT 2017 Study 72K – CGE2 – Doc. 11

Mandate of the IWGRC:

- criteria for the identification of MAC equipment in the International Registry
 - improving the draft Protocol's transparency in portraying the types of equipment covered
- (see report of the first session of the CGE, UNIDROIT 2017 Study 72K – CGE1 – Report, paras. 165, 167)

Focus of the work of the IWGRC: criteria for the identification in the Registry (registration criteria)

Transparency issues: request for further research to be undertaken by the UNIDROIT Secretariat

Purpose of the criteria for the identification of MAC equipment in the Registry (registration criteria)

Asset-based system of registration of the Cape Town Convention system

requires the unique identification of assets in the International Registry

- searching parties must be able to determine on the information that is available from the International Registry (registrable information) whether a specific asset is covered by a registration or not
 - where searching parties cannot identify a specific asset using the information that is available from the Register, a registration is not effective and rights (priority) of the registered creditor may be lost
- > **need for clear, unambiguous registration criteria**
and an uncomplicated and error-proof registration process

Issues and difficulties concerning the unique identification of individual pieces of MAC equipment

- no universally agreed system for the unique identification of MAC equipment
 - > in practice, serial numbers are allocated by individual manufacturers of MAC equipment without universally agreed standards as to the system and allocation of these numbers
- it cannot be ruled out that the same serial number has been allocated to several assets
 - different manufacturers may use identical serial numbers
 - one and the same manufacturer may use identical serial numbers for several different assets
- use of the manufacturer's name as registration criterion gives rise to additional difficulties
 - use of trading names, different local subsidiaries (such as plc., AG, S.A., Inc., etc.)
 - changes of manufacturers' names over time
 - manufacturers' or brand names written in characters of different scripts
- huge number of manufacturers of MAC equipment as compared to aircraft industry

Solution suggested by the IWGRC for Articles XVI and XVII (1) (outline)

- manufacturer's serial number used as the single criterion for the registration of MAC equipment in the International Registry (and for priority searches of the Registry)
- registration requires the indication of additional information
 - categories of additional information to be determined in Regulations (e.g., brand name)
 - additional information is not an indexing criterion for the Registry
 - additional information ensures unique identification of MAC asset in the registration in the (rare) cases where a search for the serial number alone retrieves multiple results

General objectives of the solution suggested by the IWGRC

- manufacturer's serial number, even if not a perfect system and lacking universal standardisation, can in practice be expected to allow a unique identification of MAC equipment in most cases
- only rarely will an identical serial number have been allocated to several pieces of MAC equipment (whether by the same or by several manufacturers)
 - > this relatively small risk does not justify overly burdensome additional information requirements (avoiding unnecessary costs and risk of ineffectiveness of registration due to inadvertent failure to comply with strict information requirements)
- flexibility: required additional information can be adapted by future Regulations
- additional information not an indexing criterion, no exact matching necessary (unless the additional information is seriously misleading)
- keeping workload of Registrar manageable (no comprehensive list of manufacturers or types required)
- manufacturers' serial number typically reliably to be ascertained from the asset's serial number plaque
 - worldwide practice to use only Arabic numerals/Latin characters – as opposed to brand names etc.

Alternative solutions that did not find the support of the IWGRC

Using the manufacturer's serial number and the manufacturer's name as registration criteria

- conventional model under the Cape Town Convention system (see Aircraft Protocol)

disadvantages:

- if the manufacturer's name is used as registration criterion, it must be exactly indicated by the registering person, otherwise the registration is not retrievable and the registration is ineffective even because of merely trivial errors
(under the IGWRC's model, the manufacturer's name might form part of the required additional information and the registration is ineffective only if it is seriously misleading)
- the use of manufacturer's name together with serial number alone does not ensure unique identification since manufacturers may have re-used serial numbers for several assets

Alternative solutions that did not find the support of the IWGRC (contd.)

Requiring the Registrar to provide a comprehensive list of (standardised) manufacturer's names

- users of the International Registry could select the manufacturer's name from a list, thereby reducing the risk of errors

disadvantages:

- keeping an updated list of names would overstretch the capacities of the Registrar,
interest in a MAC asset would be registrable only if Registrar has manufacturer's name on its list

Deferring the whole issue of registration and search criteria to Regulations (Space Protocol model)

- deferring to future Regulations would provide a maximum of flexibility for future developments, but would not reflect the consensus that serial numbers should be used as basis for registration

Allocation of identification numbers by the Registrar (Railway Protocol model)

- for MAC assets (as opposed to railway rolling stock), it is/can be expected to become standard practice to allocate unique serial numbers,
therefore additional procedure of allocating/affixing identification numbers not necessary

Solution suggested by the IWGRC for Articles XVI and XVII (1)

Registration under Article XVI

Article XVI — Identification of agricultural, construction or mining equipment for registration purposes

A description of agricultural, construction or mining equipment that contains its manufacturer's serial number and such additional information as required to ensure uniqueness is necessary and sufficient to identify the object for the purposes of Article 18(1)(a) of the Convention. The Regulations shall specify the format of the manufacturer's serial number and provide what additional information is required to ensure uniqueness.

- description of MAC assets for registration purposes requires

(1) the indication of the MAC asset's manufacturer's serial number

(in the format to be specified by the Regulations)

(2) such additional information to ensure uniqueness as required under the Regulations

(such as the manufacturer's brand name, product designation, ISO-compatible PIN)

to be decided whether future Regulations should require transcriptions of names written in different scripts

-> registration can only be entered into the register if both information requirements are fulfilled;

registration is then indexed on the basis of the manufacturer's serial number

Solution suggested by the IWGRC for Articles XVI and XVII (1)

Searching the International Registry under Article XVII (1)

Article XVII — Additional modifications to Registry provisions

1. For the purposes of Article 19(6) of the Convention, the search criterion for agricultural, construction or mining equipment shall be its manufacturer's serial number.

- priority searches of the Registry can only be made using the manufacturer's serial number as searching criterion
- searches retrieve all registrations that are indexed according to this serial number
 - in the search certificates issued by the Registrar for all these search results, all the registered additional information will be presented
- where there are multiple search results for a serial number, searching persons can use the additional information to determine which registration refers to the specific asset that they are interested in
- registration is ineffective if there is an error in the registered serial number
 - (interested parties searching the Registry using the correct serial number cannot find the registration)
- errors/inaccuracies in the additional information render registration ineffective only if they are seriously misleading
 - interested parties generally can request information from the debtor if there are uncertainties in the additional information
- "seriously misleading"-criterion is regarded as inherent to the Cape Town Convention system
 - application of this criterion protects registration from being regarded as invalid due to trivial errors while at the same time protecting third parties against actually misleading registrations